

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

February 23, 2022

Honorable Rep. Aaron Ling Johanson, Chair
Honorable Rep. Lisa Kitagawa, Vice Chair
Committee on Consumer Protection & Commerce
415 South Beretania Street
Honolulu, HI 96813

Re: HB2280/Opposition

Dear Chair Johanson, Vice Chair Kitagawa, and Committee Members:

The Community Associations Institute Legislative Action Committee ("CAI LAC") opposes HB2280 to the extent it does not comply with associations' existing covenants running with the land.

Planned communities are created by a recorded declaration placing restrictions and obligations on the owners of the real properties within such communities, which creates restrictive covenants running with the land. The planned community associations are obligated to enforce such covenants, i.e., legal agreements that are binding upon all current owners and future buyers of the properties, as title transfers incorporate such covenants as encumbrances. All unit owners within such communities have legal standing to compel for enforcement of such restrictive covenant agreements, and they also have to adhere to state and federal laws.

CAI LAC is concerned about the constitutionality of the proposed legislation as applicable to existing planned communities. Under the Contract Clause, no state shall pass law impairing the obligations of private contracts.

Depending on the underlying zoning of the land certain planned communities are situated and whether there are master landscape plans incorporated in existing covenants, HB2280 will be problematic for certain associations, may lead to disputes on covenants enforcement and impact property values. It could also lead to neighbor disputes in connection of application of pesticide in residential area and certain fertilizer that has strong smells.

Both the declarations for planned community associations and Chapter 421J provide options for members of such associations to amend restrictive covenants with approval by a certain percentage of membership. Individual planned communities should reserve their own discretion on whether personal agriculture should be allowed or encouraged within their own communities.

CAI LAC believes the current amended language cannot adequately address the concerns stated above, and at the very minimum, CAI LAC proposes the following amendments (deletion marked by ~~strikethrough~~, addition marked in ***bold italics***):

"SECTION 1. Chapter 421J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§421J- Personal agriculture allowed. (a) ~~Notwithstanding any provision of an association document to the contrary, no~~ No association shall prohibit or unreasonably restrict the use of a unit owner's enclosed yard area for personal agriculture, *provided that such use is not in violation of the association's existing master landscape plan or other restrictive covenants applicable to such unit.*****

(b) This section shall apply only to enclosed yard areas that are designated for the exclusive use of the unit owner.

(c) This section shall not:

(1) Apply to provisions in an association document that impose reasonable restrictions on the use of a unit owner's enclosed yard area for personal agriculture; or

Honorable Rep. Aaron Ling Johanson, Chair
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(2) Prohibit an association from applying rules and regulations requiring that dead plant material and weeds, with the exception of straw, mulch, compost, and other organic materials intended to encourage vegetation and retention of moisture in the soil, be regularly cleared from the enclosed yard area.

(d) For purposes of this section:

"Personal agriculture" means a use of land where an individual cultivates edible plant crops for personal use or donation.

"Reasonable restrictions" means restrictions that do not significantly increase the cost of engaging in personal agriculture or significantly decrease its efficiency."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2050."

Very truly yours,

/s/Na Lan

Na Lan

HB-2280-HD-1

Submitted on: 2/23/2022 7:06:18 PM

Testimony for CPC on 2/25/2022 1:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|-----------------------------------|-----------------------------------------------------------------------------------------|--------------------|----------------------------|
| Mark R. Hagadone, Ph.D., FACFE | Member, Hawaii Legislative Action Committee / Community Associations Institute | Oppose | No |

Comments:

Honorable Rep. Aaron Ling Johanson, Chair

Honorable Rep. Lisa Kitagawa, Vice Chair

Committee on Consumer Protection & Commerce

415 South Beretania Street

Honolulu, HI 96813

Re: HB2280/Opposition

Dear Chair Johanson, Vice Chair Kitagawa, and Committee Members:

CAI LAC is concerned about the constitutionality of the proposed legislation as applicable to existing planned communities. Under the Contract Clause, no State shall pass laws impairing the obligations of private contracts.

HB2280 will be problematic for certain associations, may lead to disputes on covenants enforcement and impact property values. It could also lead to neighbor disputes in connection of application and use of pesticides in residential areas and certain fertilizers that may have odors.

We believe individual planned communities should reserve their own discretion on whether personal agriculture should be allowed or encouraged within their own communities.

CAI LAC believes the current amended language cannot adequately address the concerns above without amendments:

(deletion marked by ~~strikethrough~~, addition marked in ***bold italics***):

“SECTION 1. Chapter 421J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§421J- Personal agriculture allowed. (a) ~~Notwithstanding any provision of an association document to the contrary, no~~ *No* association shall prohibit or unreasonably restrict the use of a unit owner's enclosed yard area for personal agriculture, ***provided that such use is not in violation of the association's existing master landscape plan or other restrictive covenants applicable to such unit.***

(b) This section shall apply only to enclosed yard areas that are designated for the exclusive use of the unit owner.

(c) This section shall not:

(1) Apply to provisions in an association document that impose reasonable restrictions on the use of a unit owner's enclosed yard area for personal agriculture; or

(2) Prohibit an association from applying rules and regulations requiring that dead plant material and weeds, with the exception of straw, mulch, compost, and other organic materials intended to encourage vegetation and retention of moisture in the soil, be regularly cleared from the enclosed yard area.

Very Truly Yours:

Mark R. Hagadone

Member LAC

HB-2280-HD-1

Submitted on: 2/23/2022 7:46:17 PM

Testimony for CPC on 2/25/2022 1:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Michael Press | Individual | Support | No |

Comments:

My name is Michael Press. I am a teacher at Ilima Intermediate in Ewa Beach on Oahu. Please support and pass this bill. Mahalo!

HB-2280-HD-1

Submitted on: 2/24/2022 8:43:32 AM

Testimony for CPC on 2/25/2022 1:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Ellen Godbey Carson | Individual | Support | No |

Comments:

We all need more options for sustainable food and gardening. Using one's own yard areas for that purpose is a step in the right direction, and can help provide nutritious food for the owners and friends. It shows responsibility for creating solutions to our island's needs, and a care for the aina.

Please support this bill.